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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 217

[Docket ID: DOD-2007-OS-0001]

RIN: 0790-AI19

Service Academies

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes policy, assigns responsibilities, and prescribes procedures for DoD oversight of the Service academies (referred to in this rule as “the academies”). It implements the United States Code for the establishment and operation of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

**DATES:** Effective Date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. Keithen Washington, 703 695-5529.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

**I. Purpose of the regulatory action**

a. Purpose. This rule provides required updates to DoD policy and procedures because some policy changes and court decisions have had a great impact on the eligibility of potential applicants’ entry into a military academy. All language addressing homosexuality, homosexual acts, homosexual statements and homosexual marriage has been removed in accordance with the

December 22, 2010 repeal of Don't Ask, Don't Tell policy, which opened military service to homosexuals, and the subsequent United States v. Windsor decision (570 U.S. 12, 133 S. Ct. 2675 (2013), 1 U.S.C 7; 28 U.S.C. 1738c) which found section 3 of the Defense of Marriage Act (DOMA) unconstitutional. By removing all references to homosexual conduct, acts or marriage as grounds for discharge, otherwise qualified applicants are now free to apply and enroll in a military academy without prejudice or fear of reprisal regardless of their sexual orientation. This rule is required immediately to remove any legal and policy restrictions which would prevent a potential applicant from entry into a military academy based solely on their sexual orientation.

Additionally, the academies must attract, recruit and retain high achieving citizens who are pursuing undergraduate degrees critical to the DoD's national security mission. A highly qualified and diverse pool of citizens is needed to replenish and fortify DoD's workforce. The academies finance higher education and provide opportunities to individuals who may not otherwise have the means nor the opportunity to pursue. Furthermore, because the Military Services provide critical national security, providing them with a skilled and talented workforce is vitally necessary to defend the United States. Updating these policies and procedures is vital to the DoD meeting its mission to man an all-volunteer force with qualified citizens.

b. Succinct statement of legal authority for the regulatory action.

Authority: 10 U.S.C. Chapters 403, 603, and 903.

## II. Summary of the Major Provisions of the Regulatory Action

The academies annually provide newly commissioned officers to each Service who have been immersed in the history, traditions, and professional values of the Military Services and developed to be leaders of character, dedicated to a career of professional excellence in service to

the Nation. The accession of these officers generates a core group of innovative leaders capable of thinking critically who will exert positive peer influence to convey and sustain these traditions, attitudes, values, and beliefs essential to the long-term readiness and success of the Military Services.

### **III. Costs and Benefits**

Administrative costs are negligible and the benefits would be clear, concise rules that enable the Secretary of Defense to ensure that the Service Academies operate efficiently and meet the needs of the armed forces.

### **Retrospective Review**

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review," DoD's full plan and updates can be accessed at:

<http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

### **Public Comment**

Notice and comment are not required for this rule under the Administrative Procedure Act because, as the rule establishes policy, assigns responsibility, and prescribes procedures for DoD oversight of the academies, it directly relates to a military function of the United States (See 5 U.S.C. 553(a)(1)). However, DoD previously published a proposed rule on October 18, 2007 (72 FR 59053-59064), but that version was never finalized. One public comment was received that was provided as a means for improvement.

Comment: The comment received concerned the protocol requiring that all new cadets and midshipmen to undergo Human Immunodeficiency Virus (HIV), drug, and alcohol testing within

72 hours of reception, and the requirement that any appointment as a cadet or midshipman to any of the Service Academies will be terminated if and "when it is determined the individual is HIV positive or dependent on drugs or alcohol." The individual who submitted the comment did not contest the justification for appointment termination if any of the mentioned conditions existed. Rather the individual took issue with the fact that HIV positive status was paired with drug and alcohol dependency and believes it implies a similarity between drug and alcohol dependency and affliction with HIV.

Response: It is recognized that HIV affliction and drug and alcohol abuse are very different issues. Accordingly, the three are no longer linked. Additionally, due to comments received during interagency coordination of this rule, language addressing HIV affliction as well as language addressing drug and alcohol abuse have been removed from this rule. A reference to the appropriate DoD Instructions that address these conditions has been included in the rule.

### **Other Changes**

- (1) Language addressing foreign students has been included and/or clarified.
- (2) Language addressing homosexuality, homosexual acts, homosexual statements and homosexual marriage has been removed.
- (3) For additional understanding and clarity, added a definition for excess leave.
- (4) Reworded some language for clarity based on additional internal comments received.

### **Regulatory Procedures**

#### **Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

**Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act” (2 U.S.C. Chapter 25)**

It has been determined that 32 CFR part 217 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified that 32 CFR part 217 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

This rule does not add any new information or reporting requirements. Existing collections approved under OMB Control Number 0701-0026, "Nomination for Appointment to the United States Military Academy, Naval Academy, and Air Force Academy," will be used. The Department will continue to review its processes to identify additional collection instruments and consider how these collection tools may be improved and make revisions accordingly. We welcome your comments on how you think we can improve on our information collection activities that are expiring and scheduled for extension and/or revision.

**Executive Order 13132, “Federalism”**

It has been determined that 32 CFR part 217 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 217

Colleges and universities, Education.

Accordingly 32 CFR part 217 is added to read as follows:

## **PART 217—SERVICE ACADEMIES**

Sec.

217.1 Purpose.

217.2 Applicability.

217.3 Definitions.

217.4 Policy.

217.5 Responsibilities.

217.6 Procedures.

Appendix A to Part 217—Applicant Briefing Item on Separation Policy

Authority: 10 U.S.C. Chapters 403, 603, and 903.

### **§217.1 Purpose.**

This part establishes policy, assigns responsibilities, and prescribes procedures for DoD oversight of the Service academies (referred to in this part as “the academies”).

### **§217.2 Applicability.**

This part applies to Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the combatant commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the “DoD Components”).

### **§217.3 Definitions.**

These terms and their definitions are for the purposes of this part.

Academic year. The time period beginning the first day of the fall semester and ending on the last day of the spring semester.

Academy(ies). The U.S. Military, the U.S. Naval, and the U.S. Air Force Academy.

Academy preparatory schools. Postsecondary educational institutions operated by each of the Military Departments to provide enhanced opportunities for selected candidates to be appointed to the academies.

Active duty lists. A single list of certain officers serving on active duty. Officers are carried on the active duty list of the Military Service of which they are members in order of seniority. (See 10 U.S.C. 620 for additional information.)

Active duty service obligation. A commitment of active military service for a specified period of time.

Agreement. The agreement signed by a U.S. cadet or midshipman in accordance with 10 U.S.C. 2005, 4348(a), 6959(a), or 9348(a).

Appointment. U.S. applicants who are selected for admission to the academies are appointed by the President as cadets or midshipmen. Those U.S. cadets and midshipmen who complete the course of instruction at an academy may be appointed as a commissioned officer in a Military

Service. Foreign students admitted to the academies for a course of study pursuant to 10 U.S.C. chapters 403, 603, and 903 and this part, are not formally appointed as cadets or midshipmen.

Boards of Visitors. Boards that visit the academies annually and provide a report to the President of their views and recommendations about the academies. 10 U.S.C. chapters 403, 603, and 903 define the composition and purpose of those boards.

Cadets and midshipmen. U.S. citizens having been appointed to one of the academies and having taken the oath as cadets or midshipmen. Although not eligible for a formal appointment, foreign students admitted to the academies for a course of study will be called cadets and midshipmen and will be accountable to policies and procedures that govern attendance and will receive all emoluments commensurate with a U.S. citizen cadet or midshipman. Foreign students will not take the oath of office, are at no time considered to be serving on active duty in the Military Services, and will not be eligible for nor offered a commission in a Military Service upon satisfactory completion of their academy course of study nor be eligible to be called to active duty if disenrolled.

Cost of education. Those costs attributable directly to educating a person at an academy under regulations prescribed by the Secretary of the Military Department concerned and approved by the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)) and Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO). Such costs include a reasonable charge for the provided education, books, supplies, room, board, transportation, and other miscellaneous items furnished at government expense. Excluded are the costs for cadet or midshipman pay and allowances in accordance with 37 U.S.C. 203, uniforms, military training, and support for nonacademic military operations.

Dependency. Any person for whom an individual has a legally recognized obligation to provide



support, including but not limited to spouse and natural, adoptive, or stepchildren.

Disenrollment. The voluntary or involuntary termination of a cadet or midshipman from one of the academies.

Excess leave. Leave granted that exceeds accrued and advance leave and for which the Service member is not entitled to pay and allowances. Generally, a negative leave balance at the time of release from active military duty, discharge, first extension of an enlistment, desertion, or death shall be considered excess leave regardless of the authority under which the leave resulting in the negative balance was granted.

Hazing. Any unauthorized assumption of authority by a cadet or midshipman whereby another cadet or midshipman suffers or is exposed to any cruelty, indignity, humiliation, oppression, or the deprivation or abridgment of any right. The Secretaries of the Military Departments or academy superintendents may issue regulations that augment this definition to amplify or clarify local guidelines.

Honor code (concept). A prescribed standard of ethical behavior applicable to cadets or midshipmen, as determined by the Secretary of the Military Department concerned.

Military service obligation. A commitment of military service for a specified period of time.

#### **§217.4 Policy.**

It is DoD policy, pursuant to 10 U.S.C. chapters 403, 603, and 903 and consistent with this part, that:

(a) The academies provide, each year, newly commissioned officers to each Service that have been immersed in the history, traditions, and professional values of the Military Services and developed to be leaders of character, dedicated to a career of professional excellence in service to the Nation.

(b) The accession of those officers generates a core group of innovative leaders capable of thinking critically who will exert positive peer influence to convey and sustain these traditions, attitudes, values, and beliefs essential to the long-term readiness and success of the Military Services.

(c) Active duty service is the primary means of reimbursement for education.

(d) Cadets and midshipmen disenrolling or those disenrolled after the beginning of the third academic year from a Service academy normally will be called to active duty in enlisted status, if fit for service.

#### **§217.5 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Serves as the DoD focal point for matters affecting the academies.

(2) Provides DoD oversight and management of the academies.

(b) Under the authority, direction, and control of the USD(P&R), the ASD(M&RA):

(1) Serves as the OUSD(P&R) focal point for matters affecting the academies and resolves matters of conflict that may arise among the Military Departments.

(2) Assesses and monitors academy operations to ensure cost-effective employment of resources in the accomplishment of the academies' mission.

(3) Develops policy and provides guidance for DoD oversight and management of the academies.

(4) Develops overall DoD policy and provides guidance for the conduct and administration of a uniform academy disenrollment policy.

(5) Approves or disapproves requests to exceed the foreign student limitation from a single country provision in §217.6(d)(2).

(6) Approves or disapproves requests to release a cadet or midshipman prior to the completion of 2 years of active service.

(c) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Health Affairs (ASD(HA)) establishes medical standards for applicants to the academies that are applied through the DoD Medical Examination Review Board, according to DoD Directive 5154.25E, “DoD Medical Examination Review Board” (available at <http://www.dtic.mil/whs/directives/corres/pdf/515425e.pdf>).

(d) The Under Secretary of Defense for Policy (USD(P)):

(1) Oversees the management of admission vacancies for foreign students.

(2) Designates countries from which foreign students may be selected.

(3) Issues implementing guidance as necessary, including waiver of tuition or fees reimbursement either wholly or partially for management of admission vacancies for foreign students.

(e) The USD(C)/CFO establishes and publishes the tuition rate for foreign students.

(f) Under the authority, direction, and control of the USD(C)/CFO and with the coordination of the superintendents of the academies, the Director, Defense Finance and Accounting Service (DFAS), is responsible for billing and collecting reimbursements due to the academies for foreign students, except when those reimbursements have been waived by the USD(P).

(g) The IG DoD evaluates programs, as set forth in DoD Directive 5106.01, “Inspector General of the Department of Defense” (available at <http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf>) and 5 U.S.C. Appendix (also known as and referred to in this part as the “Inspector General Act of 1978,” as amended).

(h) The Secretaries of the Military Departments:

- (1) Establish and maintain a military academy pursuant to 10 U.S.C. chapters 33, 47, 61, 403, 603, and 903 and 10 U.S.C. 702 and 2005 and this part. 10 U.S.C. chapter 47 is also known and referred to in this part as “The Uniform Code of Military Justice (UCMJ),” as amended.
- (2) Ensure appropriate oversight and management of the academies.
- (3) Develop quantified performance goals and measures, linked with the schools’ mission statements to annually evaluate the performance of the academies and preparatory schools.
- (4) Prescribe a written agreement when providing an academy appointment to U.S. candidates who agree to conditions in §217.6(f) and are otherwise qualified.
- (5) Prescribe regulations on:
  - (i) A breach of a cadet’s or midshipman’s “agreement to serve” for the purpose of ordering that individual to active duty.
  - (ii) Procedures for determining whether such a breach has occurred.
  - (iii) Standards for determining the period of time for which a person may be ordered to serve on active duty according to §217.6(j). (See also 10 U.S.C. 4348(c), 6959(c), and 9348(c).
- (6) Work with the Director, DFAS, to establish and maintain jointly developed, uniform accounting procedures for determining the cost of education at their respective academies. These procedures must be consistent with Chapter 6 of Volume 11A of DoD 7000.14-R, “Department of Defense Financial Management Regulation” (available at [http://comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_11a.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_11a.pdf)) and DoD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures” (available at <http://www.dtic.mil/whs/directives/corres/pdf/501040p.pdf>). A standard method for computing reimbursement of the cost of education will be in these procedures and accounts receivable will be recorded as follows:

- (i) Establish an accounts receivable for the cost of education when a cadet or midshipman disenrolls or is disenrolled from an academy.
- (ii) Reduce the accounts receivable proportionately to the period of active duty served by the disenrolled cadets or midshipmen.
- (7) Prescribe the repayment procedures of an individual's outstanding debt so that the total amount due -- based on 37 U.S.C. 303a, monthly repayment schedules, repayment method, and other information -- clearly will be explained in writing to the debtor.
- (8) Ensure that proper credit management and debt collection procedures are followed pursuant to chapters 28-32 of Volume 5, and chapters 38 and 50 of Volume 7A of DoD 7000.14-R (available at [http://comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_05.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_05.pdf) and [http://comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_07a.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07a.pdf)), to include prescribing repayment procedures of an individual's outstanding academy financial obligation.
- (9) Develop an organizational capability to collect, maintain, and submit information on resources in support of an academy, the academy preparatory school, and any other associated training programs.

#### **§217.6 Procedures.**

- (a) Academies. Academies are 4-year educational institutions operated by each of the Military Departments to provide successful candidates with degrees of Bachelor of Science and commissions as military officers. The core of the academies' mission statements will be to educate, train, and inspire men and women to become officers in the Military Services to serve the United States.
- (b) Organization of the academies. (1) There will be at each academy a superintendent and Commandant appointed by the President, a dean of the faculty, chaplain, permanent professors,

an athletic director, and a director of admissions. The Secretaries of the Military Departments may employ as many civilian faculty members as considered necessary.

(2) Incumbents of dean, director of admissions, and permanent professorships held by military personnel will be appointed by the President of the United States by and with the advice and consent of the Senate. The superintendent and the commandant will be detailed to those positions by the President.

(3) The immediate governance of the academies is by their superintendents, who also will serve as the commanding officers of the academies and their military posts.

(4) The superintendent is responsible for the day-to-day operation of the academy as well as the welfare of cadets or midshipmen and staff.

(5) The dean of the faculty of the academy directs and manages the development and execution of an undergraduate curriculum that recognizes the requirement for graduates to understand technology, while gaining a sound historical perspective and an understanding of different cultures. The curriculum will be broadly based in the physical and social sciences, the study of languages and cultures in areas in which the DoD is engaged, and the arts and humanities.

(6) The commandant directs and manages military education and training programs and exercises command over cadets or midshipmen, as established by law and determined by the superintendent.

(7) The director of athletics directs and manages the intercollegiate athletic programs and other physical fitness programs, as determined by the superintendent. Intercollegiate athletic programs will be in full compliance with all applicable National Collegiate Athletics Association rules and requirements while maintaining the professional and ethical values of the Services.

- (8) The academic faculty will consist of civilian and military members in proportions determined by the Secretary of the Military Department concerned. Faculty members will possess a mix of operational experience, academic expertise, and teaching ability. They:
- (i) Exemplify the highest standards of ethical and moral conduct and performance established by the Secretaries of the Military Departments concerned, and the superintendents concerned, consistent with this part.
  - (ii) Participate in the full spectrum of academy programs and activities and the development of their curriculum.
  - (iii) Actively participate in the professional, moral, and ethical development of cadets and midshipmen as role models, mentors, and through the enforcement of standards of behavior and conduct.
- (9) Service members will conduct themselves in accordance with the requirement of exemplary conduct as specified in 10 U.S.C. 3583, 5947, and 8583.
- (10) The superintendent will ensure that noninstructional staff consists of the minimum number of people consistent with effective achievement of the objectives of the academy and its military post.
- (11) Compensation and benefits for civilian faculty members will be sufficiently competitive to achieve academic excellence at pay levels determined by the Secretary of the Military Department concerned.
- (12) Additional guidance about organization of the academies is in 10 U.S.C. chapters 403, 603, and 903.

- (c) Nomination and appointment of cadets and midshipmen. (1) Nomination, appointment, admission, authorized strength, and allocation of strength among nominating authorities for cadets and midshipmen are prescribed in 10 U.S.C. chapters 403, 603, and 903 and this part.
- (2) U.S. cadets and midshipmen will be appointed by the President alone. An appointment is conditional until the cadet or midshipman is admitted.
- (3) Appointments will be offered on a competitive basis to nominated candidates having the strongest potential for success as cadets or midshipmen, and ultimately as commissioned officers. The nominating sources will be notified of candidates selected for appointment.
- (4) Those selected for appointment must have demonstrated, through evaluations prescribed by the Secretary of the Military Department concerned:
- (i) High standards of moral character, personal conduct, and integrity.
  - (ii) The potential to successfully complete the program of instruction.
  - (iii) An acceptable level of physical fitness.
  - (iv) Medical qualification for appointments to the academies and for commissioning as required in 10 U.S.C. chapter 33 and further delineated through examination procedures defined in DoD Directive 5154.25E and medical standards defined in DoD Instruction 6130.03, “Physical Standards for Appointment, Enlistment, or Induction in the Military Services” (available at <http://www.dtic.mil/whs/directives/corres/pdf/613003p.pdf>), DoD Instruction 6485.01, “Human Immunodeficiency Virus in Military Service Members” (available at <http://www.dtic.mil/whs/directives/corres/pdf/648501p.pdf>), and DoD Instruction 1010.16, “Technical Procedures for the Military Personnel Drug Abuse Testing Program” (available at <http://www.dtic.mil/whs/directives/corres/pdf/101016p.pdf>).
- (5) Specific eligibility criteria also guide selection:



- (i) Age. Applicants must be at least 17 years of age, and not have passed their 23rd birthday on July 1 of the year of entry into an academy.
- (ii) Citizenship. Except for foreigners admitted to the academies under 10 U.S.C. chapters 403, 603, and 903 and this part, those appointed must be citizens or nationals of the United States.
- (iii) Residence. If nominated by an authority designated in the “Congressional” and “U.S. Possession” categories as defined in 10 U.S.C. chapters 403, 603, and 903, applicants must be domiciled in the constituency of such authorities.
- (iv) Dependents. Those appointed as cadets or midshipmen must not have dependents.
- (v) Marital Status. Those appointed as cadets or midshipmen cannot have a spouse.
- (6) The academies will work to ensure timely medical evaluations of applicants. Issues relating to the administrative management of those evaluations that are not resolved to the satisfaction of the academies and the activity performing the evaluation will be forwarded to the ASD(M&RA) for resolution.
- (7) To be admitted to an academy, U.S. appointees must take and subscribe to an oath prescribed by law or by the Secretary of the Military Department concerned. If a U.S. candidate for admission refuses to take and subscribe to the prescribed oath, the appointment is terminated.
- (d) Cadets and midshipmen from foreign countries. (1) Foreign students may receive instruction at an academy; the number may not exceed the limits in 10 U.S.C. chapters 403, 603, and 903. Such instruction will be on a reimbursable basis. The USD(P) designates the countries from which candidates may be selected, and may waive reimbursement, either wholly or partially.
- (i) Although not eligible for a formal appointment, foreign students admitted to the academies for a course of study will be called cadets and midshipmen, will be accountable to policies and

procedures that govern attendance, and are entitled to the equivalent pay and allowances of a cadet or midshipmen appointed from the United States, and from the same appropriation.

(ii) Foreign students will not take the oath addressed in paragraph (c)(7) of this section, are at no time considered to be serving in any status in the Military Services, and will not be eligible for nor offered a commission in the Military Services upon satisfactory completion of their academy course of study nor eligible to be called to active duty if disenrolled.

(2) Not more than three foreign students from a single country may be enrolled at a single academy without ASD(M&RA) approval. Requests for such approval will be submitted by the Secretary of the Military Department concerned, through the USD(P) to the ASD(M&RA). The enrollment restriction does not apply to students participating in exchange programs of up to two semesters' duration.

(3) By the end of May of each year, the USD(C)/CFO will establish the tuition rate for the succeeding school year and publish that rate to the Secretaries of the Military Departments, the USD(P), and the ASD(M&RA).

(4) By the end of June of each year, the USD(P) will publish a list of countries eligible to send students to the academies during the subsequent academic year, specifying reimbursement requirements. That list will be provided to the Secretaries of the Military Departments, the ASD(M&RA), and the responsible U.S. Defense Attaché Offices (USDAOs) or the American embassies, if no servicing USDAO exists.

(5) By the end of August of each year, the superintendent of each academy will extend application invitations, through applicable USDAOs (or the American embassies), to each eligible country. Those invitations will describe admissions procedures and define the country's official sponsorship responsibilities.

(6) The superintendent will manage the selection and notification of candidates and, with the assistance of the applicable USDAO or American embassy, obtain written acknowledgment from the sending government of sponsorship responsibilities and their agreement to reimburse tuition costs, when applicable.

(7) Questions on enrollment or reimbursement will be forwarded to the ASD(M&RA), for resolution with the USD(P).

(e) Development of cadets and midshipmen. (1) Development of cadets and midshipmen is prescribed in 10 U.S.C. chapters 403, 603, and 903 and this part.

(2) The normal course of instruction at an academy is 4 years, with selected promising cadets or midshipmen pursuing longer terms when required to meet academy educational or other graduation requirements. The Secretaries of the Military Departments will arrange the course of instruction so that cadets or midshipmen are not required to attend classes on Sunday.

(3) Besides academic preparation, each academy will provide for development of military and leadership skills and physical fitness.

(4) The practice of hazing is prohibited by Department policy and law (see 10 U.S.C. 4352, 6964, and 9352).

(5) An important component in the growth of cadets or midshipmen is the leadership development system. Its purpose is to motivate graduates to seek leadership responsibilities and enable them to think clearly, decide wisely, and act decisively under pressure and in a variety of leadership situations. The leadership development system will be based on:

(i) Positive leadership, equal opportunity, and respect for one another's values, beliefs, and personal dignity.

(ii) Elimination of dysfunctional stress. The Secretaries of the Military Departments concerned and superintendents determine knowledge requirements and procedures for the development and indoctrination of cadets and midshipmen. Memorization of trivia, such as complete menus for meals, is generally inappropriate. Establishment of such requirements will be closely monitored by the academies.

(iii) Emphasis on proper bearing, fitness, and posture. These are important to effective leadership and contribute to overall well-being. Exaggerated forms of posture, speech, or movement generally do not constitute proper military bearing. Establishment of such requirements will be closely monitored by the academies and used only with the knowledge and approval of the superintendents.

(iv) Positive role models; opportunities to learn, practice, and receive feedback; and access to support. Direct support to leadership development will be provided by concurrent and relevant coursework, athletic competition, and hands-on experience to show the relationship between theories of leadership in the classroom and practice of leadership outside the classroom.

(6) The highest ethical and moral standards are expected of the officer corps. The honor systems of the academies will support that expectation by enforcing adherence to standards of behavior embodied in the honor codes or concepts of the academies. Violations of honor standards may constitute a basis for disenrollment.

(f) Management of cadets and midshipmen. (1) A U.S. cadet or midshipman entering an academy directly from civilian status assumes a Military Service obligation (MSO) of 8 years, under 10 U.S.C. 651 and DoD Instruction 1304.25, “Fulfilling the Military Service Obligation” (available at <http://www.dtic.mil/whs/directives/corres/pdf/130425p.pdf>).

(2) Cadet and midshipman pay is prescribed by 37 U.S.C. 203(c).

(3) Cadets and midshipmen will meet medical accession standards outlined in paragraph (c)(4)(iv) of this section.

(4) As a condition for providing education at an academy, the Secretary of the Military Department concerned will require that each U.S. cadet or midshipman enter into a written agreement in which he or she agrees:

(i) To complete the course of instruction for graduation specified in the agreement to accept an appointment as a commissioned officer, if tendered, and to serve on active duty for a period specified in the agreement if called to active duty or, at the option of the Secretary of the Military Department concerned, to reimburse the United States for the amount specified by the Secretary of Military Department concerned, as prescribed in this section.

(ii) That if such cadet or midshipman fails to complete the educational requirements specified in the agreement, such person, if so ordered by the Secretary of the Military Department concerned, will serve on active duty for a period specified in the agreement.

(iii) That if such person fails to complete the period of active duty specified in the agreement, he or she will reimburse the United States for the amount specified by the Secretary of the Military Department concerned in accordance with the requirements of 10 U.S.C. 2005 and 37 U.S.C. 303a.

(iv) To such other terms and conditions as the Secretary of the Military Department concerned may prescribe to protect U.S. interests.

(5) An obligation to repay the United States under this section is, for all purposes, a debt owed the United States. A discharge in bankruptcy under Title 11 U.S.C. does not discharge a person from such debt if the discharge order is entered less than 5 years after:

(i) The date of the termination of the agreement or contract on which the debt is based; or

(ii) In the absence of such agreement or contract, the date of the termination of the service on which the debt is based.

(6) The sustainment of high performance standards ensures that cadets and midshipmen who are unwilling or unable to successfully complete the program of instruction at the academy are identified quickly. As defined by the Military Department concerned, cadets or midshipmen who are identified as “deficient” in conduct, studies, or physical fitness, and disenrolled from any academy may not, unless recommended by an academic or academy board, be returned or reappointed to an academy. Those cadets or midshipmen selected for return will be reappointed consistent with the criteria prescribed by the board.

(i) Individuals failing to complete the required course of academy instruction (including disenrollment for academics, conduct, honor code violations, or physical deficiency) will be disenrolled.

(ii) If an appointment is terminated before graduation due to a U.S. cadet’s or midshipman’s breaching his or her agreement, or if a U.S. cadet or midshipman refuses to accept a commission following graduation, the 8 year MSO will be fulfilled by the period for which the member is ordered to serve on active duty or in the Reserve Component in an applicable enlisted status. He or she may be ordered to active duty for a period not to exceed 4 years under 10 U.S.C. 4348(b), 6959(b), or 9348(b). Policies that apply to U.S. cadets or midshipmen disenrolled from an academy who entered the academy directly from civilian status are:

(A) Fourth and Third Classmen (First and Second Years). A fourth or third classman disenrolled will retain their MSO in accordance with 10 U.S.C. chapter 47 and DoD Instruction 1304.25 but have no active duty service obligation (ADSO).

(B) Second Classmen (Third Year). A second classman resigning before the start of the second class academic year or disenrolled for cause resulting from actions that occurred only before the start of the second class academic year will be discharged as if he or she were a third classman.

(C) Second or First Classmen (Third and Fourth or Subsequent Years). Any second or first classman who is disenrolled and who is not suited for enlisted Military Service for reasons of demonstrated unsuitability, unfitness, or physical disqualification, will be discharged in accordance with the current Military Service regulations that implement this part, to include monetary recoupment. Other second or first class cadets and midshipmen disenrolled after the beginning of the second class academic year, but before completing the course of instruction, may be transferred to the Reserve Component in an enlisted status and ordered to active duty for not less than 2 years, but not more than 4 years and incur an MSO, in accordance with 10 U.S.C. 4348(b), 6959(b), or 9348(b).

(D) First Classman (Declining Appointment). Any first classman completing the course of instruction and declining to accept an appointment as a commissioned officer may be transferred to the respective Reserve Component in an enlisted status and ordered to active duty for 4 years and incurs a MSO in accordance with 10 U.S.C. 4348(b), 6959(b), and 9348(b) and DoD Directive 1235.10, "Activation, Mobilization, and Demobilization of the Ready Reserve" (available at <http://www.dtic.mil/whs/directives/corres/pdf/123510p.pdf>).

(iii) The disposition of cadets and midshipmen entering an academy from the Regular or Reserve Component of any Military Service (except those who enter an academy by way of its preparatory school from civilian status) and then not completing the program will be determined in accordance with 10 U.S.C. 516:

(A) Fourth and Third Classmen (First and Second Years). If disenrolled during the fourth or third class year, the cadet's or midshipman's Military Service commitment will be equal to the time not served on the original enlistment contract, with all service as a cadet or midshipman counted as service under that contract. Those individuals with less than 1 year remaining in the original enlistment contract may be discharged on approval of the disenrollment by the Military Department concerned.

(B) Second Classmen (Third Year). If disenrolled before the beginning of the second class academic year, the cadet's or midshipman's Military Service commitment will be the same as in paragraph (f)(6)(iii)(C) of this section.

(C) Second or First Classmen (Third and Fourth or Subsequent Years). If first and second classmen are disenrolled for issues occurring after the beginning of the second class academic year, their Military Service commitment will be the same as in paragraphs (f)(6)(ii)(C) and (D) of this section, as appropriate, or will be equal to the time not served on the original enlistment contract (with all service as a cadet or midshipman counted as service under that contract), whichever period is longer.

(D) Disenrolled Cadets or Midshipmen not Suited for Enlisted Military Service. A cadet or midshipman who entered into an academy from the Regular or Reserve Component of a Military Service who is subsequently disenrolled from an academy and is not suited for enlisted Military Service because of demonstrated unsuitability, unfitness, or physical disqualification, will be discharged in accordance with DoD Instruction 1332.14, "Enlisted Administrative Separations" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>) and Military Department regulations that specifically address the disenrollment of cadets or midshipmen.



(E) Military Grade of Disenrolled Cadets or Midshipmen Transferred to the Reserve Component or Active Duty. Whether transferred to the Reserve Component or reverted back to active duty status, the disenrolled cadets and midshipmen retain their prior enlisted grade. However, in no case will the cadet or midshipman be transferred to the Reserve Component in a grade lower than would a similarly situated cadet or midshipman who entered the academy from a civilian status.

(iv) The disposition of U.S. cadets and midshipmen entering an academy by way of its preparatory school from civilian status and then not completing the program will be managed in accordance with paragraph (f)(6)(ii) through (iv) of this section.

(v) A cadet or midshipman tendering a resignation will be required to state a reason for this action. A resignation may be accepted when in the interest of the Military Service. Accepting the resignation will not in and of itself constitute a determination of the U.S. cadet's or midshipman's qualification for enlisted Military Service.

(vi) U.S. cadets or midshipmen who are not ordered to active duty due to their misconduct or unsuitability, or because their petition for relief from an active duty obligation was approved by the Secretary of the Military Department concerned, must reimburse the United States in accordance with the requirements of 10 U.S.C. 2005 and 37 U.S.C. 303a for education costs commensurate with time spent at the academy. The Secretary of the Military Department concerned may remit or cancel any part of the indebtedness of a cadet or midshipman to the United States. There may be circumstances when neither Active Duty nor reimbursement is appropriate. The Secretaries of the Military Departments will carefully review the circumstances to determine whether waiving Active Duty or reimbursement is consistent with existing statutory requirements, personnel policies or management objectives, equity and good conscience, and is in the best interest of the United States. Such circumstances may include, but are not limited to,

a cadet's or midshipman's death, illness, injury, or other impairment that is not the result of the cadet's or midshipman's misconduct; or needs of the Service.

(vii) Change in Status Notification. When a U.S. cadet or midshipman is disenrolled from an academy and discharged from the Service concerned, the Selective Service System will be notified by the Military Department of the individual's status change.

(viii) Dependency Disenrollment or Resignation. U.S. cadets or midshipman who resign or are disenrolled for violation of the dependency policy may request transfer to the Reserve Officer Training Corps (ROTC). Approval and method of transfer is at the discretion of the Secretary of the Military Departments concerned. Cadets and midshipmen who are approved to transfer to ROTC, graduate, receive a commission, and fulfill their Active Duty Service Obligation (ADSO) are not subject to reimbursement as outlined in this section.

(ix) Disenrollment of cadets and midshipmen for medical disqualification.

(A) Persons separated for being medically disqualified from further Military Service will be separated and will not be obligated for further Military Service or for reimbursing education costs in accordance paragraph (f)(6)(vi) of this section.

(B) Persons separated for reasons in addition to being medically disqualified from further Military Service may be obligated for reimbursing education costs at the discretion of the Military Department concerned.

(C) Cadets and midshipmen who become medically disqualified for appointment (including pregnancy) as a commissioned officer during their senior year, who otherwise would be qualified to complete the course of instruction and be appointed as a commissioned officer, and who are capable of completing the academic course of instruction with their peers, may be permitted by the Secretary of the Military Department concerned to complete the academic course of

instruction with award of an academic credential determined by the Secretary of the Military Department concerned.

(D) Pursuant to 10 U.S.C. 1217, when the Secretary of the Military Department concerned determines that a U.S. cadet or midshipman is medically disqualified for appointment as a commissioned officer due to injury, illness, or disease aggravated or incurred in the line of duty while entitled to cadet or midshipman pay, the Secretary may retire the cadet or midshipman with retired pay in accordance with 10 U.S.C. chapter 61.

(g) Graduation and commission. (1) Cadets and midshipmen who complete all requirements prescribed by the Secretary of the Military Department concerned for graduation and appointment may be awarded a bachelor of science degree, and U.S. cadets and midshipmen who meet medical accession standards outlined in paragraph (c)(4)(iv) of this section are eligible to be commissioned, in accordance with 10 U.S.C. chapters 33, 403, 603, and 903.

(2) Graduation leave will be administered in accordance with 10 U.S.C. 702.

(3) Officers appointed from cadet or midshipman status will not be voluntarily released from active duty principally to pursue a professional sports activity with the potential of public affairs or recruiting benefit to the DoD during the initial 2 years of active commissioned service. A waiver to release a cadet or midshipman prior to the completion of 2 years of active service must be approved by the ASD(M&RA). Exceptional personnel with unique talents and abilities may be authorized excess leave or be released from active duty and transferred to the Selective Reserve after completing 2 years of active commissioned service when there is a strong expectation their professional sports activity will provide the DoD with significant favorable media exposure likely to enhance national recruiting or public affairs.

(i) Approval authority and processing requirements. Secretaries of the Military Departments will establish the approval authority and specific processing requirements for all requests for excess leave and early release from active duty under this program.

(ii) Excess leave. Officers may apply for excess leave, after serving a minimum of 24 months of the current obligated active duty period, for a period not to exceed 1 year, for the purpose of pursuing a professional sports activity with potential recruiting or public affairs benefits to the DoD. The agreement between the individual and the professional sports team or organization must reflect the intent of both parties to employ the individual in a way that brings credit to the DoD. The agreement between the individual and the professional sports team or organization must reflect the intent of both parties to employ the individual in a way that brings credit to the DoD. Personnel are not entitled to pay and allowances while in excess leave status, nor are they entitled to receive disability retired pay if incurring a physical disability while in excess leave status. Officers must:

(A) Remain subject to recall to active duty.

(B) Be in good standing, to include meeting all physical fitness requirements and standards.

(C) Have secured an actual contract or binding commitment with a professional team or organization guaranteeing the opportunity to pursue an activity with potential recruiting benefits as described.

(D) Acknowledge that time served in excess leave will not be used to satisfy an existing ADSO.

(iii) Early release. Officers may request early release from their ADSO for the purpose of pursuing a professional sports activity with potential recruiting or public affairs benefits for the DoD. Any agreement between the individual and the professional sports team or organization must reflect the intent of both parties to employ the individual in a way that brings credit to the

DoD. Military Departments will notify the ASD(M&RA) when an officer is released early from active duty under this program. In addition to any further requirements as determined appropriate by the Secretary of the Military Department concerned, applicants for early release must, at a minimum:

- (A) Have served 24 months of the original ADSO.
- (B) Be in good standing, to include meeting all physical fitness requirements and standards.
- (C) Have secured an actual contract or binding commitment with a professional sports team or organization guaranteeing the opportunity to pursue an activity with potential recruiting benefits as described.
- (D) Be assigned to a Selected Reserve unit and meet normal retention requirements based on minimum participation standards in accordance with 10 U.S.C. 10147 and 10148, and be subject to immediate involuntary recall for any reason to complete the period of active duty from which early release was granted.
- (E) Acknowledge that the officer is subject to monetary repayment of educational benefits at a prorated share based on the period of unfulfilled ADSO, and that such recoupment is in addition to the two-for-one Selected Reserve obligation required in paragraph (g)(3)(iii)(F) of this section. Officers subject to recoupment under the provisions of 10 U.S.C. 2005 for receipt of advanced education assistance must reimburse the United States a pro-rata share of the cost of their advanced education assistance based on the period of unfulfilled active duty service.
- (F) Agree that, in the event that the officer is no longer under a contract or binding agreement with a professional sports team or organization, the officer will either return to active duty to complete the remaining ADSO, or continue in the Selected Reserve for a period of not less than two times the length of their remaining ADSO, as determined by their Service.

(4) At the discretion of the Secretary of the Military Department concerned, first class cadets or midshipmen not medically qualified for commissioning may be placed on limited duty status, as defined by the Military Department concerned, for up to 1 year until medical commissioning requirements of this section and the Military Service are met. If all requirements are met, the cadet or midshipmen may be commissioned. If these requirements are not met, the cadet or midshipmen will be disenrolled subject to recoupment as discussed in paragraph (f)(6)(ii)(C) and (f)(6)(ix) of this section.

(h) Academy preparatory schools. (1) Academy preparatory schools provide an avenue for effective transition to the academy environment. The academy preparatory schools prepare selected candidates for admission who are judged to need additional preparation in academics, physical fitness, or character development.

(i) Each school's programs of instruction will focus on academic preparation and on those areas of personal and physical preparation that reflect the mission of both the academy and the Service concerned.

(ii) The core of the academy preparatory schools' mission statement will be "To motivate, prepare, and evaluate selected candidates in an academic, military, moral, and physical environment, to perform successfully at the \_\_\_\_\_ Academy."

(2) Faculty members will possess academic expertise and teaching prowess. They will exemplify high standards of conduct and performance. Faculty members will be expected to participate in the full spectrum of the school's programs, to include providing leadership, exemplary conduct and moral behavior for cadet candidates and midshipmen candidates to emulate, as well as involvement in the development of curricular and extracurricular activities.

Curriculum design will recognize academic preparation as the priority; associated programs will capitalize on economies and efficiencies.

(3) Preparatory school programs will provide tailored individual instruction to strengthen candidate abilities and to correct deficiencies in academic areas emphasized by the academies. Additionally, preparatory school programs will provide supplementary instruction in military orientation, physical development, athletics, leadership, character development, and other specific areas of interest determined by the Secretary of the Military Department concerned.

(i) Review and oversight. (1) Service academies will establish quantified performance goals and measures, linked with their respective school's mission statement to annually evaluate the performance of the academies. Metrics will include graduation rate for enrolled candidates. The graduation rates of those entering the academies should be at least 75 percent.

(2) Preparatory schools will establish quantified performance goals and measures, linked with the schools' mission statements to annually evaluate the performance of the preparatory schools. At a minimum, the metrics will include:

(i) Academy preparatory school to academy entrance ratio. The ratio of the number of preparatory school students entering the academy to the number that entered prep school should be 70 percent or greater.

(ii) Preparatory student and direct appointee graduation rate. The preparatory school students' academy graduation rate should not drop more than 5 percent below the direct appointees' graduation rate.

(3) Boards of Visitors of the academies are established and procedures prescribed by 10 U.S.C. chapters 403, 603, and 903 to inquire into the efficiency and effectiveness of academy operations. The designated federal officer for each Board of Visitors will provide the

ASD(M&RA) a copy of each report required by 10 U.S.C. chapter 47 within 60 days of the report's submission to the President.

(4) Oversight by the IG DoD will be provided in accordance with DoD Directive 5106.01 and the Inspector General Act of 1978. When required, the ASD(M&RA) recommends to the IG DoD any areas of academy operations that merit specific review during the subsequent fiscal year.

(5) Annual meetings of the superintendents will be hosted by the academies on a rotating basis and include the commandants, the deans, the directors of admissions and athletics, and others designated by the superintendents. Meeting attendees will discuss performance measures and other matters of collective interest. Meeting attendees will identify plans to address areas requiring corrective action. Following the meeting, the host superintendent will provide the ASD(M&RA) a summary of issues and actions discussed and each Service academy will provide an assessment of their respective service academy and preparatory school.

(j) Inter-service commissioning. (1) To be qualified for inter-Service appointment, applicants must meet all graduation requirements and all requirements for commissioning in the gaining Service; and both the gaining and losing Secretaries of the Military Departments concerned must concur in the appointment. In accordance with 10 U.S.C. chapter 33, not more than 12.5 percent of a graduating class from any academy may be commissioned in the Military Services not under the jurisdiction of the Military Department administering that academy.

(2) Once all requirements for inter-Service appointments have been met, endorsements from the losing academy will contain the applicants' current academic transcripts, order of merit standing, record of physical fitness and, if applicable, results of the gaining Service's testing for flight training or other qualification. Applications supported by the losing Military Department will be



forwarded to the gaining Military Department no later than November of the calendar year before graduation. The gaining Secretary of the Military Department concerned will act on applications no later than the end of December of the year prior to commissioning and will immediately notify the losing Secretary of the Military Department concerned of decisions. Affected cadets or midshipmen will be quickly notified of the disposition of applications.

(3) Those selected for transfer will be integrated within active duty lists of the gaining Military Service. When seniority on that list relies on academy class standing, they will be initially integrated immediately following the cadet or midshipman holding equal numerical class standing at the academy of the gaining Military Department.

#### **Appendix A to Part 217—Applicant Briefing Item on Separation Policy**

(a) Individual responsibility. Service members represent the Military Services by word, actions, and appearance. Their unique position in society requires them to uphold the dignity and high standards of the Military Services at all times and in all places. In order to be ready at all times for worldwide deployment, military units and their members must possess high standards of integrity, cohesion, and good order and discipline. As a result, military laws, rules, customs, and traditions include restrictions on personal behavior that are different from civilian life. Service members may be involuntarily separated before their enlistment or term of service ends for various reasons established by law and military regulations. These are some of the circumstances that may be grounds for involuntary separation from the Academy:

(1) Infractions. The individual establishes a pattern of disciplinary infractions, discreditable involvement with civil or military authorities, causes dissent, or disrupts or degrades the mission of his or her unit. That may also include conduct of any nature that would bring discredit on the Military Services in the view of the civilian community.

(2) Dependency. Any person for whom an individual has a legally recognized obligation to provide support including but not limited to spouse and natural, adoptive, or stepchildren.

(3) Physical fitness and body fat. The individual fails to meet the physical fitness or body fat standards.

(b) Hazing, harassment, or violence not tolerated. The practice of hazing is prohibited by law (10 U.S.C. 4352, 6964, and 9352). A cadet or midshipman dismissed from an academy for hazing may not be reappointed as a cadet or midshipman at an academy. The Military Services do not tolerate harassment or violence against any Service member for any reason. Cadets and midshipmen must treat all Service members, at all times, with dignity and respect. Failure to do so may result in the individual being disciplined or involuntarily separated before his or her term of service ends.

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